

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAY 24 2002

PATRICK FISHER
Clerk

RICHARD ALLEN WESTLEY,

Petitioner - Appellant,

v.

ROBERT KURTZ, Warden, and THE
ATTORNEY GENERAL OF THE
STATE OF COLORADO,

Respondents - Appellees.

No. 02-1051
(D.C. No. 01-Z-2418)
(D. Colorado)

ORDER AND JUDGMENT*

Before **TACHA**, Chief Judge, **EBEL** and **LUCERO**, Circuit Judges.

Petitioner-Appellant Richard Allen Westley appeals from the denial of his petition for a writ of habeas corpus under 28 U.S.C. § 2254. He claims that the Colorado state courts erred in determining that he had not established excusable neglect for the untimely filing of his motion for post-conviction relief in state

*After examining appellant's brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2) and 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This Order and Judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

court. The excusable neglect arises, according to Westley, from his lack of access to an adequate law library during his incarceration. This claim is not the proper subject of habeas review. As the district court properly recognized, an alleged error that “focuses only on the State’s post-conviction remedy and not the judgment which provides the basis for his incarceration . . . states no cognizable federal habeas claim.” Sellers v. Ward, 135 F.3d 1333, 1339 (10th Cir. 1998).

Westley’s motion for a certificate of appealability is DENIED. This appeal is DISMISSED. The motion to proceed in forma pauperis is also DENIED.

ENTERED FOR THE COURT

David M. Ebel
Circuit Judge